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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/804,403

03/12/2001

Aaron Strand

8362-DIV

1089

22922 7590 11/28/2007  
REINHART BOERNER VAN DEUREN S.C.  
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SUITE 2100  
MILWAUKEE, WI 53202

EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/804,403

Applicant(s)

STRAND ET AL.

Examiner

Viren Thakur

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128 and 130-147 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,6-9,14,16,18,19,75,79,82-86,93,104,107-112,122-128 and 130-147.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 19, 2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 125-128, 130-147 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Instant claim 125 recites the limitation "wherein at least a substantial portion of the lengths of said first and second interlockable fastener tracks of said reclosable fastener assembly...extend completely above said areas of structural weakness. Instant claim 144 similarly recites "wherein at least a substantial

portion of said fastener tracks extend entirely above said areas of structural weakness into said tear off hood portion.” In both the above claims, it is nuclear as to how a portion of a structure extends completely or entirely above the structural weakness. Either a substantial portion extends above the structural weakness or the fastener tracks extend completely or entirely above the structural weakness.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 104 is rejected under 35 U.S.C. 102(b) as being anticipated by Herber et al. (US 5,525,363). The reference and rejection are taken as cited in the prior Office Action, mailed August 23, 2006.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claim 1, 2,6-9,14,18,19,75,79,82-86,104,107-1 12,122-130,132,134-137,142-147 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6,327,754 B1) in view of Stolmeier et al. (US 6,257,763 B1) for the reasons of record in the non-Final Rejection mailed on September 7, 2005.
9. Claims 16,93, 131,138,139,141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6,327,754 B1) in view of Stolmeier et al. (US 6,257,763 B1) as applied to claims 1,2,6-9,14,18,19,75,79,82-86,104,107-112,122-130, 132,134-137,142-147 further in view of Hayashi et al. (US 6074097), for the reasons of record in the non-Final Rejection mailed on September 7, 2005.
10. Claim 133 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6,327,754 B1) in view of Stolmeier et al. (US 6,257,763 B1) as

applied to claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-1 12, 122-130, 132, 134-138, 142-147 further in view of May (US 5,725,312), for the reasons of record in the non-Final Rejection mailed on September 7, 2005.

11. Claim 140 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6,327,754 B1) in view of Stolmeier et al. (US 6,257,763 B1) as applied to claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-1 12, 122-130, 132, 134-138, 142-147 further in view of Boeckmann et al, for the reasons of record in the non-Final Rejection mailed on September 7, 2005.

### ***Double Patenting***

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-2, 8-9, 14, 75, 79, 83-86, 93, 104, 107, 108-111, 112, 125-128, 131, 133 and 144-147 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3-4,6,10,12-16 and 20 of U.S. Patent No. 7086782. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 7086782 contain every element of instant claims 1-2, 8-9, 14, 75, 79, 83-86, 93, 104, 107, 108-111, 112, 125-128, 131, 133 and 144-147 and as such encompass the limitations of claims 1-2, 8-9, 14, 75, 79, 83-86, 93, 104, 107, 108-111, 112, 125-128, 131, 133 and 144-147.
14. Claim 143 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 75 and 95 of copending Application No. 10/300,355. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of copending Application 10/300,355 contain every element of claim 143 of the present application and as such encompasses claim 143 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.



15. Claims 1, 75, 104, 125-128, 130 and 140-147 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 11-17, 19 and 20 of copending U.S. Patent No. 7165887. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 7165887 contain every element of claims 1, 75, 104, 125-128, 130 and 140-147 of the present application and as such anticipate claims 1, 75, 104, 125-128, 130 and 140-147 of the present application.

***Response to Arguments***

16. Applicant's arguments on page 24 of the response, that Herber et al. does not meet the limitations of the instant claim, specifically wherein "said fastener halves of said reclosable fastener structure are located above said areas of structural weakness and within said fold structure" have been fully considered but are not deemed persuasive. Applicant states that in the Herber et al. reference the areas of structural weakness (item 245) are clearly located well above the male and female closure members (Item 218 and 220). It is respectfully asserted, however, that the claim recites wherein the fastener halves of the reclosable fastener structure are located above the areas of structural weakness and within the fold structure. The claim does not specifically recite that the releasably engageable track of the fastener halves is located above the area of

structural weakness, but rather states that the fastener halves are located above the weakness. Based on this limitation, Herber et al. disclose wherein the fastener halves are above the area of structural weakness as shown in figures 18 and 19.

17. On page 26 of the response, applicant states that what the Examiner proposes in the combination of Belmont et al. and Stolmeier et al. is to grossly modify the Stolmeier et al. reference to not use the separate tamper evident sheet forming the hood but to take the perforations which were in the hood of Stolmeier et al. reference and move them to the web (52) of the Belmont et al. reference.
18. This argument has been considered but is not deemed persuasive. It is asserted that Belmont et al., already teaches placing the reclosable fastener structure within what would be considered the hood or fold of the bag, as shown in figure 3C. Stolmeier et al. similarly teach a hood or fold of a sheet of web material, wherein the reclosable fastener structure is within the fold structure and above areas of structural weakness (Figure 7, Item 72). Stolmeier et al. also provide the motivation for providing the areas of structural weakness for the purpose of facilitating removing the tamper evident sheet (See Column 3, Line 65 to Column 4, Line 1). Therefore to employ perforations to the fold structure of Belmont et al. as taught by Stolmeier et al. would have been obvious for the purpose of facilitating removal of the hood of Belmont et al.

19. Applicant further asserts that since the Belmont et al. reference already has a tamper evident closure covering its reclosable fastener or zipper arrangement, it would be counterintuitive to add the tamper evident sheet of the Stolmeier et al. reference. This argument is not persuasive since, as discussed above, Stolmeier et al. is relied on to teach a line of structural weakness below the reclosable fastener structure for the purpose of facilitating removal of a tamper evident hood and not for adding another hood structure to the Belmont et al. embodiment, which already has the hood structure.
20. Nevertheless, if another embodiment of Belmont et al., such as Figures 1 and 2 were relied on, it would have been obvious to one having ordinary skill in the art to modify Belmont et al. and apply the entire hood structure including the line of structural weakness, as taught by Stolmeier et al. for providing tamper evidence and facilitating removal of the tamper evidence means.
21. On page 27, applicant asserts that employing the perforations to the bag of Belmont et al. would be untenable since high speed manufacturing equipment would make the bags tear the perforations during the process of creating the top seals 54 and 70 of the Belmont reference. This argument has been considered but is not deemed persuasive. It is not seen how applicant's arguments relative to how the article is made are relevant to claims directed to an article. The claims are directed to an article and not a method of making the article. Additionally, applicant's disclosure is silent in mentioning any criticality to the line of structural weakness with respect to the mass manufacturing process.

Applicant states that "this is why both the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members." It is not clear as to what is considered well away from the bottoms of the fastener members, and as also recognized by applicant, Stolmeier et al. teach the structural weakness positioned below the fastener structures. Even further it is noted that in Figure 3c of the Belmont reference, Belmont et al. does not disclose how the reclosable fastener structures would be accessed. It would have been obvious to one having ordinary skill in the art that some means of opening the fold structure of figure 3c would be required, whether this is using a scissor to cut the portion off or using some form of structural weakness to remove the fold portion so as to access the reclosable fasteners. For the reasons discussed above and in the Office Action mailed September 7, 2005 applicants arguments are not convincing.

22. Applicant's arguments with respect to the objection to the claims are persuasive. The objection has been withdrawn.

23. As a result of the amendment the rejection of claim 125 under 35 U.S.C. 112, second paragraph has been withdrawn.

24. Applicant's arguments with respect to the rejection of claim 142 under 35 U.S.C. 112, second paragraph are persuasive. The rejection has been withdrawn.
25. Upon reconsideration, the rejection of claims 104 and 107-109 under 35 U.S.C. 112, second paragraph has been withdrawn.
26. Upon reconsideration, the rejection of claims 108, 111, 123, 127 and 144 under 35 U.S.C. 112, second paragraph has been withdrawn.
27. Regarding the double patenting rejections, it acknowledged that the Office cannot make double patenting rejections as a result of issuing a restriction requirement. Nevertheless, it is asserted that the scope of the claims of the instant application and the claims of copending applications or issued patents have been amended during the prosecution so as to encompass the limitations of the instant application. For instance, claim 1 of the instant application was part of the elected group; however claim 1 of U.S. Patent No. 7086782 still reads on the instant claim. Therefore, the double patenting rejections have been maintained.
28. As a result of the cancellation of claims 1-10, 14-50 and 54-89 in copending application no. 10300487, the double patenting rejection of instant claims 1, 75, 83, 85, 86, 104, 125, 130, 131, 132, 139 and 144 are provisionally

rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17, 20, 43, 44, 50, 55, 57, 60 and 85 of copending Application No. 10/300,487 has been withdrawn.

29. Applicant's arguments with respect to the rejection of claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, 130, 132-139, 142-147 over Herber et al. in view of Stolmeier et al. have been considered and are persuasive. The rejection is withdrawn. As a result, the rejection of claim 140 over Herber et al. and Stolmeier et al. and in further view of Boeckmann et al.; claims 131 and 141 over Herber et al. and Stolmeier et al. and in further view of Hayashi et al. have also been withdrawn.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Viren Thakur  
Examiner  
Art Unit: 1794

*Steve Weinstein*  
STEVE WEINSTEIN 1794  
PRIMARY EXAMINER  
11/26/07